

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CATHERINE MCKOY, MARKUS FRAZIER and  
LYNN CHADWICK individually and on behalf of all  
others similarly situated,

Case No. 18-cv-09936 (LGS)(SLC)

Plaintiffs,

- against -

THE TRUMP CORPORATION and DONALD J.  
TRUMP, in his personal capacity,

Defendants.  
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**DEFENDANTS' RULE 56.1 STATEMENT OF UNDISPUTED FACTS**

Defendants, by their undersigned attorneys, as and for their statement of undisputed facts pursuant to Rule 56.1, states as follows:<sup>1</sup>

**ACN, INC.**

1. ACN, Inc. ("ACN") has operated a multi-level marketing company since 1993 in the US and internationally. Merriman Tr. 15-16, 22, 37-38.



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<sup>1</sup> The evidence cited herein is as follows: the declaration of Peter T. Shapiro in support of this motion is cited as the "Shapiro SJ Decl."; the declaration of Mr. Shapiro in opposition to Plaintiffs' class certification motion is cited as the "Shapiro Decl."; the declaration of Matthew Brinckerhoff in support of class certification is cited as the "Brinckerhoff Decl."; the transcript of the deposition of President Trump is cited as the "Trump Tr."; the transcript of Plaintiff Markus Frazier's deposition is referenced as the "Frazier Tr."; the transcript of Plaintiff Lynn Chadwick's deposition is referenced as the "Chadwick Tr."; the transcript of Plaintiff Catherine McKoy's deposition is referenced as the "McKoy Tr."; the transcript of David Merriman's deposition is referenced as the "Merriman Tr."; the transcript of Robert Stevanovski's deposition is referenced as the "Stevanovski Tr."; the transcript of Jessica Howard's deposition is cited as the "Howard Tr."; the declaration of Al Plumb is cited as the "Plumb Decl."; the declaration of Devonne Richardson is cited as the "Richardson Decl."; the declaration of John Barringer is cited as the "Barringer Decl."; and the declaration of Angelique Davis is cited as the "Davis Decl." The Shapiro SJ Decl. explains where those documents can be found in the record.

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Age Group	Percentage
18-24	35%
25-34	25%
35-44	15%
45-54	10%
55-64	5%
65-74	3%
75-84	2%
85+	1%

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**PLAINTIFFS**

17. Plaintiff Markus Frazier is a Maryland resident. SAC ¶ 23.

18. Frazier joined ACN to make money not to buy services for himself. Frazier Tr.  
26-27.

19. Frazier heard about ACN in 2016 from a business acquaintance, who solicited him and gave him a magazine. Frazier then saw the Celebrity Apprentice and another TV program, and he recalls President Trump saying that ACN was a great company. Before joining he watched a webinar that did not include President Trump. Frazier Tr. 11-26.

20. Frazier continued to receive motivational pitches from his acquaintance and attended two local ACN conventions that included motivational speeches, at one of which

President Trump was not even mentioned. Frazier Tr. 31-40.

21. Frazier spoke to friends and family after signing up for ACN hoping they would join ACN or purchase ACN services, but they did not. Frazier Tr. 28-43.

22. Frazier attended two local ACN conferences. Frazier Tr. 28-43.

23. He did not sign up new IBOs or sell products. Frazier Tr. 28-43.

24. Frazier terminated his relationship with ACN about a year after joining. Frazier Tr. 28-43.

25. Plaintiff Lynn Chadwick is a Pennsylvania resident. SAC ¶ 23.

26. Chadwick enrolled as an IBO to earn money, not to buy services for herself. Chadwick Tr. 147-149.

27. Chadwick heard about ACN's videophone product when she was signing up as an IBO, but that product did not interest her. Chadwick Tr. 140.

28. In 2013 a relative who was an IBO convinced Lynn Chadwick to attend a meeting and join ACN. Chadwick Tr. 21-22.

29. Hearing success stories from other IBOs influenced Chadwick's decision to become an IBO. Id. 84-85.

30. Chadwick initially signed up a few IBOs but did not earn income from them. Id. 38-50.

31. She attended over a dozen IBO meetings during the following year. Id. 38-50.

32. Chadwick attended four ACN promotional events. Id.

33. Chadwick renewed her ACN membership in April 2014, but subsequently ended her relationship with ACN around December 2014. Id. 77.

34. Prior to the official end of her tenure with ACN in December 2014, Chadwick had

not participated in ACN for a period of months. Chadwick Tr. 36-42; 54-59; 60-61; 77-80.

35. Plaintiff Catherine McKoy is a California resident. SAC ¶ 21.

36. Ms. McKoy was recruited by former plaintiff Williams and attended a meeting with members of a club she belonged to and then joined ACN. McKoy Tr. 228-229.

37. She saw a video that included President Trump saying words to the effect that if you do the work you will make money. McKoy Tr. 228-229.

38. She did not know who President Trump was, but she learned he was on the Celebrity Apprentice, which her mother watched but she did not. McKoy Tr. 234; 245; 257-8.

39. Ms. McCoy attended ACN meetings, signed up five or six IBOs after joining ACN and sold three products. McKoy Tr. 198-201, 221-225, 248.

40. Ms. McKoy made \$38 from ACN before quitting. Id. 236.

41. McKoy recalled having heard President Trump's statements about ACN that if you do the work you will make money and that he liked the company. McKoy Tr. 202; 229.

42. The three Plaintiffs do not have any detailed recollection of any allegedly false statements by President Trump including the quoted statements the Second Amended Complaint claims they relied when they decided to join ACN. Compare SAC ¶¶ 21, 22, 24, 26, 107, 113, 115, 116, 118, 138, 150, 154, 170, 192, 212, 213, 226, 254, 271 to Chadwick Tr. 24-25; Frazier Tr. 15-18; and McKoy Tr. 191-194.

43. Some IBOs knew or assumed President Trump was a paid spokesperson. Barringer Decl. ¶ 5; Davis Decl. ¶ 9; Plumb Decl. ¶ 9. Howard Tr. 16-22.

44. Plaintiff Frazier gave no thought to whether President Trump was being paid for his ACN-related activity. Frazier Tr. 51; 90.

45. Plaintiff McKoy thought President Trump was an IBO. McKoy Tr. 192, 328.

## DEFENDANTS

46. Defendant Donald J. Trump is the former President of the United States and previously was an extremely successful businessman who from 2006 to 2015 was a celebrity spokesperson for ACN. Merriman Tr. 185; 192; Brinckerhoff Decl. Exhs. 2, 7, 8, 9, 10, 11, 12; Trump Tr. 21-22; 61-62; 93.

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

51. President Trump is quoted in one Success From Home magazine article in which he does not mention ACN other than praising the founders, and instead merely discusses direct marketing as a business model. Brinckerhoff Decl. Exh. 16.

52. In another article in the same periodical President Trump again praised the founders and did not make any of the statements alleged to be fraudulent in the SAC. *Id.* Exh. 30.

53. Still another magazine article presented only President Trump's personal story. *Id.* Exh. 31.

54. A 2010 article included similar content and also addressed the videophone product. *Id.* Exh. 32.

55. ACN was featured on the television program the Celebrity Apprentice in 2009 and 2011. Brinckerhoff Decl. Exhs. 36 and 37.

56. President Trump discussed ACN on the two Celebrity Apprentice episodes. *Id.* Exhs. 36 and 37.

57. On the first episode, President Trump touted the videophone and ACN. *Id.* Exhs. 36 and 37.

58. On the second episode he praised ACN and its executives. *Id.* Exhs. 36 and 37.

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Dated: New York, New York  
May 26, 2023

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